

C.F. 500/ -

**IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT
BILASPUR**

W.P. No. 2670/ 2005

PETITIONERS :

- 1) Dr. Lalit Jain
S/o Shri Komal Chand Jain,
Aged about 27 years,
R/o (P) Ajay Teders, Jawaharganj
Dabhara, District-Gwalior(MP.)
- 2) Dr. Praveen Agrawal
S/o Shri Gopal Narayan Agrawal,
Aged about 29 years,
R/o 3/1, Thatipur Colony, Murar
District-Gwalior(MP.)
- 3) Dr. Madhu Bhuvan Naidu
S/o Shri Vemkat Krishnesh,
Aged about 27 years,
R/o Dahi, Post:Kujhi, Tahsil:Dhar
Distt. Dhar (MP).
- 4) Dr. Jitendra Agrawal,
S/o Shri. N.K. Agrawal
Aged about 28 years,
R/o Ramdas Nagar, Takerapara,
Bilaspur, District-Bilaspur(CG)
- 5) Dr. Eash Nigam
S/o Shri R.K. Nigam,
Aged about 26 years,
R/o 343, Vasant Vihar, SECL
Bilaspur, District-Bilaspur (CG).

P.R. No. 2744/05
Presented by Shri. Komal Das,
dated 21/6/05



RESPONDENTS :

Versus

- 1) State of Chhattisgarh
Through the Secretary,
Health Education Department,
DKS Bhawan, Raipur (CG).
- 2) The Director,
Health & Medical Education,
State of Chhattisgarh,
DKS Campus, Raipur (CG).
- 3) The Dean,
Pt. Jawahar Lal Nehru Memorial
College, Raipur (CG)

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V.G. Tamsikar & Sonar

(2)

4) Dr. Atin Kundu
S/o Nikhil Kundu,
Aged about 28 years,
R/o MIG-185, Tatibandha, Raipur
District-Raipur.

Mr. Agarwal

5) Dr. Ramnarayan Nema,
S/o Shri S. Narayan Nema,
Aged about 26 years,
R/o 80-MIG Housing Board Colony,
Damoh, Distt. Damoh (MP).

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WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA



HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2670 of 2005

Dr. Lalit Jain and four others

- Versus -

State of Chhattisgarh and four others

POST FOR ORDER ON 5TH OCTOBER, 2005

Sd/-
L.C.Bhadoo
Judge

seen
L.C.Bhadoo
5/10/05

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2670 of 2005

Dr. Lalit Jain and four others

- Versus -

State of Chhattisgarh and four others

Present: -

Mr. P. Diwaker, Senior Advocate with
Miss Sunita Jain, Advocate: For the petitioners.

Mr. Sandeep Dubey, Govt. Advocate: For the State/respondents No.1, 2 & 3.

Mr. V.G. Tamaskar, Advocate: For respondent No.4.

Mr. G.S. Agrawal, Senior Advocate with
Mr. K.R. Nair, Advocate: For respondent No.5.

ORDER

(Passed on 5th October, 2005)

L.C. BHADOO, J.

1. The petitioners had appeared in the combined Pre-PG Entrance Test 2004, which was held for the sessions 2004-05, 2005-06 & 2006-07, and secured 130, 149, 144, 201 & 172 ranks in the merit. As they could not get admission in the first counselling, they opted to remain in the waiting list.
2. By the instant writ petition, the above petitioners have questioned the propriety and correctness of the admission granted to respondent No.4 in the Orthopedic branch in the session 2004 and also the admission granted to respondent No.5 in MD Medicine on 9-7-2005.
3. The case of the petitioners is that respondent No.4 Dr. Atin Kundu was already admitted in MS Ophthalmology in Pt. Jawaharlal Nehru Medical College, Raipur, on the basis of his selection in All India Entrance Examination, 2004, therefore, he was not entitled to seek admission again in any PG course in the State of Chhattisgarh, and further that respondent No.5 Dr. Ramnarayan Nema had already taken admission in PG course of

MS General Surgery in Netaji Subhash Chandra Bose Medical College, Jabalpur in the year 2004, therefore, he was not entitled for admission in MD Medicine PG course in the year 2005 in Pt. Jawaharlal Nehru Medical College, Raipur.

4. As learned Senior Counsel appearing for the petitioners submitted that he is not pressing the petition as against respondent No.4, therefore, the case against respondent No.4, on his request, stands dismissed as not pressed, and the correctness and legality of the admission of respondent No.4 is not being examined in this order.
5. I have heard learned counsel for the parties.
6. Learned Senior Advocate for the petitioners argued that respondent No.5 Dr. Ramnarayan Nema was already admitted in PG course of MS General Surgery in Netaji Subhash Chandra Bose Medical College, Jabalpur, in the year 2004, on the basis of entrance examination conducted by the State of Madhya Pradesh and thereafter, he resigned from Netaji Subhash Chandra Bose Medical College, Jabalpur, which is evident from Annexure P-7, therefore, he was not entitled for admission in the Medical College at Raipur in PG course of Medicine. He further submitted that every candidate was required to give affidavit in the form of Appendix-VIII attached with the Rules, and respondent No.5 gave a false affidavit, therefore, he secured admission on the basis of false affidavit. He referred to Rule 1.2.2 of the Chhattisgarh Pre-PG Brochure 2004 (Chapter-I: Section-B) which envisages that the *"Candidates who apply to appear in the Test, would do so at their own risk, responsibility so far as their eligibility is concerned. Candidates finding place in the merit list will be issued Call Letters for counselling by the concerned Department. At the time of counselling their certificates and other required documents will be scrutinized. During*

scrutiny, if it is found that the candidate does not fulfill the eligibility conditions laid down he/she will not be admitted for counselling. Hence before applying, candidates should ascertain themselves whether they are eligible or not."

7. On the other hand, learned Govt. Advocate argued that in the Chhattisgarh Pre-PG Rules, 2004, there was no prohibition that any candidate studying in any college outside the State was not entitled to appear in the Chhattisgarh Pre-PG Examination 2004, and even as per the Appendix-VIII (affidavit) there was no condition which disentitles the candidate who had already taken admission in any post-graduate medical college out side the State.
8. In order to appreciate the controversy, it will be profitable to first have a glance over the relevant provisions of the brochure issued by the State Government of Chhattisgarh for Chhattisgarh Pre-PG Examination 2004. Rule 1.2.2 envisages that every candidate was required to apply to appear in the test at his own risk, responsibility and subject to eligibility, and if during the scrutiny at the time of counselling, any candidate does not fulfill the eligibility conditions laid down, then he will not be admitted for counselling. Therefore, a duty was cast on the candidate to ascertain in advance whether he was eligible for admission or not. There is another rule i.e. Rule 11.4.1 which envisages that *"A candidate so admitted will not be entitled to seek a change of subject/course later on any ground. No request for change of subject shall be entertained. The candidate shall also give an undertaking that he/she shall not make any application, representation or petition for change of subject/course so allotted/assigned to him/her"*. Rule 11.4.2 prescribes that *"Candidates who are already admitted and pursuing their studies in a Diploma course may be considered by the Government for transfer from Diploma (two years course) to three year Decree course in the*

same subject strictly on the basis of merit (marks obtained in Pre-PG Examination of the same year) on the seats which fall vacant after the last date of counselling of the year of that session and before 31st December of the same year." Every candidate was also required to give affidavit in the form prescribed under Appendix-VIII, which prescribes three conditions namely. (i) that, I am not studying in the State of Chhattisgarh since last three years selected through M.P. Pre-PG Counselling or All India Counselling; (ii) that, I have not obtained any Post Graduate Diploma during the last two years or any post graduate degree; and (iii) that during the last three years I have not been granted any post graduate diploma or degree in M.P. in any subject through the All India Counselling or the M.P. State Pre-PG Counselling.

9. Therefore, if we look into the above affidavit Appendix-VIII, respondent No.5 herein has not violated any of the three conditions viz., at the time of admission he was not studying in the State of Chhattisgarh since last three years selected through M.P. Pre-PG counselling or All India Counselling, he was also not granted any two years post graduate diploma or three years post graduate degree, during the last three years, in the State of Chhattisgarh through the All India Counselling or the M.P. State Pre-PG Counselling. Moreover, even though the affidavit of Appendix-VIII has been made part of the Rules, but under which Rule this affidavit has been prescribed, is not mentioned. Even the perusal of the form shows that it has not been drafted correctly, it does not refer Pre-PG Counselling of Chhattisgarh, but refers to M.P. Pre-PG Counselling. It appears that this affidavit has been bodily lifted from Pre-PG rules of the State of Madhya Pradesh without any modification with respect to the State of Chhattisgarh. The State of Chhattisgarh came into existence on 1-11-2000, therefore, by

the time Pre-PG Rules of 2004 came into force, more than year's time was already passed.

10. Learned counsel for the petitioners was not able to point out any rule of Chhattisgarh State Pre-PG Rules 2004 in which it has been prescribed that if any candidate has already been admitted in any post graduate medical college out of the State of Chhattisgarh, then he will not be entitled to participate in the Chhattisgarh Pre-PG Entrance Test 2004. Therefore, without providing any prohibition in the Rules such an affidavit carries no value. This affidavit can be pressed into service only when in the Rules itself there is any prohibition in giving admission to candidates who have already taken admission in any post graduate course out of the State. No provision has been made in the Rules that if any candidate who has already been selected and studying in post graduate course out of the State of Chhattisgarh, then he was not entitled for admission in PG course in the State of Chhattisgarh. Rule 11.4.1, mentioned in the earlier part of this order, prohibits the change of subject by any candidate who has been admitted in the post graduate course of Chhattisgarh. Therefore, in view of the above, I am of the opinion that the admission of respondent No.5 is not against any rule.

11. Learned counsel for the petitioners cited the order of this Court reported in AIR 2004 Chhattisgarh 1 (Dr. Sanjeev Kumar Agarwal vs. State of Chhattisgarh & others); the judgments of Apex Court reported in (2002) 6 SCC 318 (Mabel vs. State of Haryana & others) and (2002) 8 SCC 152 (Shafali Nandwani vs. State of Haryana & others). But, all these judgments are of no help to the petitioners, and the same are distinguishable on facts. As has been mentioned above, in the Chhattisgarh Pre-PG Rules 2004, there is no bar for appearing in the Chhattisgarh Pre-PG Test 2004 for any

candidate who had already once taken admission in any medical college out side the State of Chhattisgarh in the PG course.

12. In the result, there is no force in this writ petition, same is liable to be dismissed and it is hereby dismissed. No costs.

Sd/-
L.C.Bhadoo
Judge